



6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE
BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: Effective Date: 3/13/2016

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled,
1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202-4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603-7740,
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SUPPLEMENTARY INFORMATION:

ADDITIONS

On May 8, 2015 (80 FR 26548-26549) and November 16, 2015 (80 FR 70761-70762), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.
2. The action will result in authorizing small entities to furnish the products and service to the

Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

PRODUCTS:

Product Name(s) - NSN(s): Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015

8415-01-623-5052 - XS-XXS

8415-01-623-5162 - XS-XS

8415-01-623-5165 - XS-S

8415-01-623-5166 - XS-R

8415-01-623-5169 - XS-L

8415-01-623-5170 - XS-XL

8415-01-623-5172 - S-XXS

8415-01-623-5174 - S-XS

8415-01-623-5178 - S-S

8415-01-623-5180 - S-R

8415-01-623-5182 - S-L
8415-01-623-5236 - S-XL
8415-01-623-5237 - M-XXS
8415-01-623-5525 - M-XS
8415-01-623-5526 - M-S
8415-01-623-5528 - M-R
8415-01-623-5529 - M-L
8415-01-623-5534 - M-XL
8415-01-623-5537 - M-XXL
8415-01-623-5541 - L-XXS
8415-01-623-5542 - L-XS
8415-01-623-5543 - L-S
8415-01-623-5552 - L-R
8415-01-623-5553 - L-L
8415-01-623-5554 - L-XL
8415-01-623-5557 - L-XXL
8415-01-623-5740 - XL-XXS
8415-01-623-5742 - XL-XS
8415-01-623-5789 - XL-S
8415-01-623-5790 - XL-R
8415-01-623-5793 - XL-L
8415-01-623-5795 - XL-XL
8415-01-623-5796 - XL-XXL

8415-01-623-5797 - XXL-R

8415-01-623-5801 - XXL-L

8415-01-623-5803 - XXL-XL

8415-01-623-5805 - XXL-XXL

Mandatory Source(s) of Supply: Industries of the Blind, Inc., Greensboro, NC
Mississippi Industries for the Blind, Jackson, MS
San Antonio Lighthouse for the Blind, San Antonio, TX

Mandatory Purchase For: US Army; surge requirements as determined by DLA
Troop Support that are above and beyond those quantities
of ACU Coats allocated to small business, large business,
and/or other purchase priority programs.

Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

Distribution: C-List

The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) operates pursuant to statutory and regulatory requirements. Committee regulations state for a commodity or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied: the addition to the Procurement List must demonstrate a potential to generate employment of people who are blind or have other severe disabilities; the nonprofit agency proposing to provide the product or service to the Federal Government must be qualified to participate in the AbilityOne program as defined in separate Committee regulations; the nonprofit agency must prove itself capable to deliver the product or service at the quality

standard and delivery schedule required by the Government; and the Committee reviews the level of impact on the current contractor for the commodity or service.

Federal Prison Industries (FPI) submitted a comment objecting to the proposed addition of the U.S. Army Combat Uniform Coat to the Procurement List. FPI asserts in its comments that, for items already listed on FPI's Schedule of Products like the proposed U.S. Army Combat Uniform Coat, a designated central nonprofit agency of the AbilityOne program must seek a waiver of FPI's purchase priority before requesting to add the same product to the Committee's Procurement List pursuant to 41 CFR 51-3.3. Normally, FPI products have a purchase priority over AbilityOne products, as stated in FAR subparts 8.002, 8.603 and 8.704.

However, 10 U.S.C. 2410n and DFARS subpart 208.602-70 provide that, if FPI's share for the particular product is greater than five percent of the Department of Defense (DOD) market, then DOD must use competitive and fair opportunity procedures in order to purchase additional quantities from FPI, permitting FPI to participate in such competitive process which establishes that FPI no longer has a mandatory priority. The plain reading of both the statute and FAR provision is that FPI temporarily loses its mandatory purchase priority in DOD procurements when FPI provides more than five percent of the particular product market share to the DOD.

In February 2015, DOD published its annual memorandum reporting that FPI's share of the DOD market for special purpose clothing, like the U.S. Army Combat Uniform Coat, is greater than five percent and must be competed in accordance with section 2410n and subpart 208.602-70. Because FPI does not have a purchase priority for the U.S. Army Combat Uniform Coat,

then a designated AbilityOne Program central nonprofit agency is not required to obtain a decision from FPI as to whether it will exercise or waive its purchase priority before requesting to add a product to the Committee's Procurement List. Also, regardless of whether or not FPI has a particular product purchase priority, no statute or regulation prevents the simultaneous listing of the identical product on the Committee's Procurement List.

In fact, the FAR subparts 8.603 and 8.704 contemplate a purchasing priority "when identical supplies or services are on the Procurement List and the Schedule of Products issued by the Federal Prison Industries, Inc." For this particular product, FPI has lost its priority by operation of law, but the AbilityOne priority remains effective.

Section 827 of National Defense Authorization Act for Fiscal Year 2008 (NDAA for FY2008, now 10 U.S.C. 2410n) and supplemental Defense Federal Acquisition Regulation 208.602-70 do not apply to the Javits-Wagner-O'Day (JWOD) Act purchase priority established in 41 U.S.C. 8504 and implemented in FAR subpart 8.7. As preset forth at 10 U.S.C. 2410n, if FPI provides a significant market share of a particular product to DOD, then, by statute, DOD procurement activities may purchase a product listed in the latest edition of the Federal Prison Industries catalog for which Federal Prison Industries has a significant market share [defined as greater than 5%] **only if** the Secretary uses competitive procedures for the procurement or the product or makes an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries.

See 10 U.S.C. 2410n (emphasis added). That language does not direct or permit the Secretary – either expressly or implicitly - to bypass the purchase priorities stated in the FAR subparts setting forth those purchase priorities. Thus, the language in section 2410n permits DOD *to purchase products from FPI only when the Secretary conducts a competitive procurement.*

In addition, the basis for both competitive and fair opportunity procurement procedures is the Competition in Contract Act (CICA) (10 U.S.C. 2304 or 41 U.S.C. 3304) and FAR Subpart 6. Both 10 U.S.C. 2304(c)(5) and FAR Subpart 6.302-5, the implementing regulation, provide that an Agency is not required to follow CICA when expressly required by another statute to use different procurement procedures. The JWOD purchase priority, set forth at 41 U.S.C. 8504, is listed in FAR Subpart 6.302-5 as an express exception to CICA and full and open competition. While FPI is precluded by law from exercising its purchase priority for DOD procurements when it already provides greater than 5% of the market share for a particular product, competition in accordance with the Competition in Contracting Act does not apply because the JWOD purchase priority is applicable. The JWOD Act states:

§ 8504. Procurement requirements for the Federal Government

(a) In General.—An entity of the Federal Government intending to procure a product or service on the procurement list referred to in section 8503 of this title shall procure the product or service from a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled in accordance with regulations of the Committee and at the price the Committee establishes if the product or service is available within the period required by the entity.

(b) *Exception.—This section does not apply to the procurement of a product that is available from an industry established under chapter 307 of title 18 and that is required under section 4124 of title 18 to be procured from that industry.*

Pursuant to section 8504, an exception to the JWOD priority exists for procurement of a “product that is available” from FPI. When an FPI product reaches the market share of sales specified in section 2410n the product is no longer available from FPI on a priority basis pursuant to 18 U.S.C. 4124.

Therefore, if the same product is listed on the Procurement List, then Federal agencies must purchase from the designated nonprofit agencies (assuming nonprofits are able to deliver the substantially same product in the delivery window required), and cannot elect to pursue the competitive process outlined in section 2410n while ignoring the priorities set forth in the JWOD Act 41 U.S.C. 8504, and FAR subparts 8.002, 8.603 and 8.704.

SERVICE:

Service Type:	Furniture Design and Configuration Service
Service Is Mandatory For:	New Hampshire National Guard, Newington, NH
Mandatory Source of Supply:	Industries for the Blind Inc., West Allis, WI
Contracting Activity:	United States Property and Fiscal Office (USPFO), New Hampshire National Guard, Pease ANGB, NH

DELETIONS

On January 8, 2016 (81 FR 916-917), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

PRODUCTS:

NSN(s) – Product Name(s):

7510-01-600-8033 - Dated 2015 18-month Paper Wall Planner, 24" x 37"

7510-01-600-8044 - Dated 2015 12-Month 2-Sided Laminated Wall Planner, 24" x 37"

Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or
Visually Impaired, Chicago, IL

Contracting Activity: General Services Administration, FSS Household and
Industrial Furniture, Arlington, VA

NSN(s) – Product Name(s):

7510-01-600-7560 - Monthly Wall Calendar, Dated 2015, Jan-Dec, 8-1/2"x11"

7530-01-600-7569 - Daily Desk Planner, Dated 2015, Wire bound, Non-refillable, Black Cover

7510-01-600-7574 - Wall Calendar, Dated 2015, Wire Bound w/Hanger, 12" x 17"

7530-01-600-7603 - Monthly Desk Planner, Dated 2015, Wire Bound, Non-refillable, Black Cover

7530-01-600-7613 - Weekly Desk Planner, Dated 2015, Wire Bound, Non-refillable, Black Cover

7530-01-600-7628 - Weekly Planner Book, Dated 2015, 5" x 8"

7510-01-600-7631 - Wall Calendar, Dated 2015, Wire Bound w/hanger, 15.5" x 22"

Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or

Visually Impaired, Chicago, IL

Contracting Activity: General Services Administration, New York, NY

NSN(s) – Product Name(s): 4240-00-803-5839 - Bag, Waterproof

Mandatory Source(s) of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Contracting Activity: W40M Northern Region Contract Office, Fort Belvoir, VA

Barry S. Lineback

Director, Business Operations

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